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EXTRAORDINARY

PART II—Section 3

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No. 81] NEW DELHI, MONDAY, APRIL 5, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th March 1954

S.R.O. 1112.—Whereas the election of Shri Audesh Pratap Singh, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Bikapur East constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mahadeo son of Shri Ratipal, resident of Village Saralya, Birsinghpur, P.O. Minjhaura, Tahsil Akbarpore, District Faizabad,

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 100 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GORAKHPUR

PRESENT

Sri Brij Narain—*Chairman.*

Sri Brij Behari Lal & Sri Sukhdeo Prasad—*Members.*

ELECTION PETITION No. 271 Of 1952

Sri Mahadeo—*Petitioner.*

Versus

1. Sri Audhesh Pratap,
2. Sri Madan Mohan Verma,
3. Sri Madho Prasad Singh,
4. Sri Ram Prasad Singh,
5. Sri Lalta Prasad Misra,
6. Sri Ram Lal Misra,
7. Sri Ram Kumar,
- &
8. Sri Ram Lakhan Gupta—*Respondents.*

COUNSEL

For the Petitioner.—Sri Satish Chandra Khare & Sri Mohammad Ibrahim.

For the Respondent.—Sri Shambhu Nath Kaul & Sri Suraj Bhan Lal.

JUDGMENT

This is an Election Petition under Section 81 of the Representation of the People Act, 1951, on behalf of Sri Mahadeo, relating to the election held on 21st January, 1952, to the U.P. Legislative Assembly for Bikanpur East Constituency, District Faizabad. The Petitioner has alleged that Sri Ram Lal Misra, Sri Ram Kumar and Sri Ram Lakhan Gupta, respondents had filed their nomination papers before the 24th of November, 1951, but, after the scrutiny which was held on the 27th November 1951, they withdrew their candidature within the prescribed limit and they did not contest the election. According to the petitioner the respondent No. 2 had filed four nomination papers and, even though the proposers and seconders filed written objections before the Returning Officers to the effect that their signatures had been obtained on blank nomination papers these objections were improperly and illegally rejected with the result that a number of voters, who were actually made to vote for the respondent No. 2, lost their opportunity of voting for the petitioner for whom they actually wanted to vote and so the result of the election was materially affected on account of improper acceptance of the nomination papers of the respondent No. 2. The counting of votes took place on the 3rd February 1952, between 9 a.m. and 9 p.m. and as a result of counting, it was declared that the respondent No. 1 had secured 5,970 votes, the petitioner had secured 5,969 votes. Sri Madho Prasad Singh had secured 5,417 votes, Sri Lalita Prasad had secured 1,501 votes and Sri Ram Prasad Singh had secured only 1,426 votes.

The petitioner has alleged that the election of the respondent No. 1 is void because the nomination papers of the respondent No. 2 were improperly accepted as valid and this considerably affected the number of votes which would have been obtained by the petitioner and the structure of polling booths, particularly at polling station Rampur Bhagan, Bharopar Tikra, Sonaora Gaupur, Natwari Chatarpur, Toro Darabgunj and Ghuri Tikar provided with loose and low thatch screens, was so defective that the voters while looking to the symbols of the ballot boxes, in which they had to cast their votes, were exposed to the public view and were quite visible to the candidates and their agents admitted inside the polling station and so the principles of secrecy of votes were reduced to a farce and this enabled the respondent No. 1 and his agents to continue to exercise their undue influence on the voters who were his tenants or were otherwise under his thumb with the result that the election was not at all a free election. It has further been alleged by the petitioner that the respondent No. 1 through his agents and canvassers and workers got the votes of two dead persons Smt. Ilaicha, wife of Samodhi and Smt. Mahri, widow of Nachan even though these voters had died long before the polling day and they further secured the votes of two others, namely, of Ram Murat Tewari and Mata Prasad Tewari, even though these voters were in Calcutta on the date of polling. The Presiding Officer at Rampur Bhagan is alleged to have persuaded the voters on the polling day to cast their votes in favour of the respondent No. 1 and, in spite of a written protest, he did not stop acting in the alleged illegal manner. The votes of two invalid postal ballots are alleged to have been wrongly included among the votes cast in favour of the respondent No. 1.

The election of the respondent No. 1 is also alleged to be vitiated on account of undue influence exercised extensively by him, his agents, canvassers and other workers, as the respondent No. 1 is the Taluqadar and Lambardar of Khajurahat Estate and one of his chief supporters, Sri Uday Bhan Pratap Singh, is the Taluqadar and Lambardar of Bhili Estate in Faizabad. According to the petitioner, the two estates comprised of hundreds of villages all situated within the constituency of Bikanpur East and as the electors residing in these villages held mere tenancy holdings in respect of which they had to pay rent to the proprietors of the Estate through their Zileendars, Karindas and other employees and so were amenable to their influence and as the voters were threatened that, if they did not vote for the respondent No. 1 they would not be allowed to take out and graze their cattle on the zamindar's jungles, parti and usar lands nor would they be allowed to irrigate their fields from the estate tanks nor to take dry leaves of dhak twigs for preparing sugar nor to take fuel-wood from the jungles of the estate, nor would they be allowed to enjoy other amenities, which were hitherto allowed to them. They were further intimidated that, if they would vote for the petitioner they would be thrashed, harassed, molested and troubled in various ways with the result that most of the voters, who wanted to vote for the petitioner, were restrained from attending the polling booths and their list has been given in List 2 attached to the Petition.

According to the petitioner, the respondent No. 1 executed a lease of a big piece of land situated in his taluqdari in favour of one Priya Dat Ram Verma,

the then Chairman of the Municipal Board, Faizabad, with a view to secure, active help and support for his candidature and this action of the respondent No. 1 amounted to a major corrupt practice of bribery.

The procedure adopted at the counting of votes is also alleged to be in flagrant violation of Rule 46 of the Representation of the People (Conduct of Election and Election Petition) Rules and this, according to the petitioner, has materially affected the result of the election. According to the Petitioner, the counting of all the ballot papers contained in the polling boxes of one candidate was neither completed nor an account recorded in Form No. 14 nor placed in a separate cover and sealed, much less announced, before the counting of the other candidate was taken up, even though verbal and, afterwards, written applications were made to the Returning Officer to conform to the Rules. Again it is alleged that there were three intervals during the period of counting, i.e., from 1-30 p.m. to 2-30 p.m., from 4-0 p.m. to 4-30 p.m. and from 7-40 p.m. to 8-0 p.m. and, during these intervals, the counting hall was cleared off of the candidates and their agents under orders, but some of the Officers and others of the counting staff stayed behind in the hall with bundles of ballot papers taken out, and the ballot-boxes, which had not been opened and other documents which remained unsealed either with the Returning Officer or Returning Officer's seal or with the seal of any of the candidates and their agents. This illegality has been alleged to be committed by Sri J. N. Ugra and the Returning Officer remained a silent spectator. At 7-30 p.m., according to the petitioner, the Returning Officer declared that the number of votes polled by the petitioner and the respondent No. 1 were equal and there was a tie between them. But, instead of drawing lots, as enjoined by S. 55 of the Representation of the People Act and declaring the candidate on whom the lot fell as having received an additional vote, the Returning Officer ordered all the candidates and their agents to go out of the hall and, after the interval of 20 minutes, announced that the respondent No. 1 had got one more vote than the petitioner and so the respondent No. 1 was declared duly elected.

The Return of Election Expenses filed by the respondent No. 1 is also alleged to be false in material particulars as the price of two nomination papers and expenses on going from Khajurahat to Faizabad on two occasions as well as price of cloth for flags and billas and expenses on purchase of ink have not been shown therein.

The petitioner has prayed that the election of the respondent No. 1 be declared void and he be declared duly elected, instead for the general Constituency of Bilkopur East, District Faizabad and, in case the petitioner be not declared to be duly elected, the entire election be declared to be void and re-election be ordered.

The respondent No. 1 has contended that the nomination papers of Sri Madan Mohan Verma, respondent No. 2, were rightly and validly accepted by the Returning Officer after proper inquiry in the matter and the allegation of the petitioner that proposers and seconders of the respondent No. 2 filed objections supported by affidavits is false and in any case the accepting of nomination papers of Madan Mohan Verma by the Returning Officer as valid has not affected the result of the election materially. According to the respondent, the structures of all the polling stations properly ensured secrecy of voting and no voter was unduly influenced or persuaded to vote as against his wishes and the fact that the petitioner filed no objection on this account at the time of voting also goes to show that the subsequent allegations on this point are afterthought and false. It has been contended that Smt. Ilaicha, voter No. 973 did not vote for the respondent at all, while Smt. Mahuri, voter No. 1020, is alive and the allegations that she had died before the date of polling is said to be utterly false. The allegation that the respondent No. 1 got the votes of two persons, who were at Calcutta on the date of polling is also denied and the allegation that the Presiding Officer of Rampur Bhagan persuaded the voters to cast their votes in favour of the respondent No. 1 is also emphatically denied. According to the respondent No. 1, the two postal ballot papers were regular and valid and they were properly counted in favour of this respondent. It has been contended further by this respondent that, due to abolition of Zamindari and awakening among tenants, the respondent No. 1 or Sri Udal Bhan Pratap Singh were not in a position to exercise any influence on tenantry and, as the petitioner did not lodge any protest to the Officer Incharge of Election about the fact that the respondent No. 1 was influencing voters to refrain from voting, it should be inferred that the allegations of the petitioner on this point are not correct. As a matter of fact, it has been contended by this respondent that no undue influence

was exercised by him or by his canvassers or workers on any voter. The allegations that the respondent No. 1 executed a lease in favour of Sri Priya Datta Ram has also been categorically denied and the procedure adopted at the counting is said to be perfectly legal. According to the respondent No. 1, the petitioner had applied for recounting of votes and recounting was done according to rules and the District Magistrate could never be a party to any of the irregularities mentioned in the Petition. The Return of Election Expenses filed by the respondent No. 1 is said to be correct in material particulars. The petition is stated to be not maintainable in its present form and it is said to be vague and indefinite in material particulars, and it has further been alleged that there was no legal and proper presentation of the Petition and the verification of the petition is also stated to be defective and illegal.

The respondent No. 2 has also filed a written statement and he has contended that his proposers and seconders Ram Narain, Ram Sahai, Khelawan, Gaya Din and Salik did not support the allegations by their affidavits or in the oral statements in the thorough inquiry which was made by the Returning Officer and so their objections were rightly rejected. It has further been contended that the structures of thatched screens were also defective at Jana Bazar and Taron Polling Station. This respondent has vaguely supported the allegations of the petitions regarding intimidation of tenants by the respondent No. 1 and he has contended that, while every candidate worked for himself, the petitioner, as well as the other respondents had all combined for the opposition of the Congress candidate, namely, the respondent No. 2. This respondent has, however, stated that the illegality specified in para 10 of the Petition was not committed by or at the instance of the District Magistrate and it has been admitted by this respondent that, after there was a declaration of a tie, the representative of the petitioner, respondent No. 1 and the respondent No. 2 jointly demanded the recounting of votes despite the fact that the Returning Officer wanted to draw lots as provided by law and on this demand the Officers present asked for a respite of 20 minutes for tea against which no objection was raised and, on a fresh recounting in the presence of the representatives of the petitioner, respondent No. 1 and the respondent No. 2, it was discovered that one packet of ballot papers contained one extra ballot paper and this bundle related to the votes of the respondent No. 1. The other respondents did not contest this petition.

The following Issues were framed on the pleadings of the parties for determination:—

1. Are the reliefs claimed by the Petitioner not according to law and is the petition liable to be dismissed on this ground?
2. Is the petition defective for want of verification of lists and is the petition liable to be dismissed on this ground?
3. Are necessary particulars and specific instances of major corrupt practices, minor corrupt practices and illegal practices not given in the Petition as required by Law? If so, are the allegations contained in the Petition general, vague and indefinite and are they liable to be ignored and rejected on this account?
4. Whether the nomination papers of Sri Madan Mohan Verma, respondent No. 2, improperly accepted by the Returning Officer? If so, whether the result of the election has been materially affected thereby?
5. Were there any defects in the structure of polling booths so as to violate the principles of secrecy of voting and did respondent No. 1 exercise undue influence on the voters because the principle of secrecy of votes was not observed?
6. Whether the votes of the persons in List 1 were improperly accepted for the respondent No. 1 even though some of the voters were not present on the date of election on the polling booths?
7. Whether the Presiding Officer of Rampur Bhagan persuaded the voters to vote for respondent No. 1? If so, with what effect?
8. Whether the postal ballot papers were wrongly counted for the respondent No. 1? If so, with what effect?
9. Whether the respondent No. 1 or Udal Bhan Pratap Singh or their men, agents or workers exercised undue influence, intimidation, or coercion on the voters to vote for the respondent No. 1 and were the voters influenced thereby? If so, with what effect?
10. Was any lease executed by respondent No. 1 in favour of Sri Priya Datta Ram after the nomination of the respondent No. 1? If so, does it

amount to offering illegal gratification for securing votes and did Sri Praiya Datta Ram secure votes for the respondent No. 1 by undue influence, intimidation and coercion?

11. Were there any irregularities in the counting of votes as alleged in para. 10 of the Petition? If so, to what effect?
12. Is the Petitioner estopped from questioning recounting of votes?
13. Is the Return of Election Expenses filed by the respondent No. 1 not true in material particulars? If so, with what effect?
14. Whether there were 3 intervals on the date of counting of votes and were the boxes containing the counted votes sealed? If so, its effect?
15. To what relief, if any, is the Petitioner entitled?

FINDINGS

Issues Nos. 1 and 2.—Findings on these Issues have already been given on the 6th of January, 1953, and these Issues have been decided in the negative. The findings on these Issues, dated 6th January, 1953, will be incorporated in this Judgment.

Issue No. 3.—It has been contended that the Petition is vague and indefinite in material particulars and the reliefs claimed are not according to law and so the petition is liable to be rejected summarily for legal defects in the form of the Petition. It was mentioned in List 1 of the Petition that voters mentioned at Nos. 973 and 1,020, who had cast their votes in favour of the respondent No. 1, had actually died before the date of election and voters bearing Nos. 666 and 667 were present at Calcutta on the date of polling, but, even then their votes were secured by the respondent No. 1 through other agencies. In List 2 it was mentioned that voters of Kurwa, hamlet of village Jaisingh Mau of polling station Taron, Tahsil Bikapur, District Faizabad, were forced to stay by the Karindas of Sri Audhesh Pratap Singh, Taluqdar of Khajurhat, and so they could not exercise their right of vote. In List 3, four irregularities in the Return of Election Expenses filed by the respondent No. 1 have been pointed out. The petitioner gave further and better particulars of the alleged corrupt practices mentioned in List 2 on the 29th of January, 1953 and List 2 was amended accordingly and, by means of this amendment, it was alleged that the voters of Dharampur, Bara, Jadopur, Mahawan, Hussainpur, Pechhura, Sonara, Mangari, Ghuri Tikar, Kurwa, Balli Kirpalpur and Natwan whose specifications were given, had been intimidated. Later on, the List of particulars was again amended on 23rd February, 1954 and there is no doubt that now the Petitioner has given the names of villages as well as the names of voters, who were intimidated along with their parentage and the time of exercising undue influence as well as the names of persons, who exercised undue influence and it cannot be said that the present Petition is vague and indefinite in material particulars. The arguments that the Petition or the Lists could not be amended under the provisions of the Representation of the People Act cannot be deemed to be of any force, as this controversy has been finally set at rest by the judgment of the Supreme Court in Civil Appeal No. 100 of 1953 (*Jagarnath—Vs.—Jawant Singh and others*) decided on 20th January, 1954, in which it has been clearly held that the provisions of Sections 82, 110, 115, 116 of the Representation of the People Act clearly suggest that, if any proper party is omitted from the list of respondents, such a defect is not fatal and the Tribunal is entitled to deal with it under the Provisions of the Code of Civil Procedure. Order 1, rules 9, 10 and 13 and the provisions of Section 82 of the Representation of the People Act are in terms similar to the provision of Order 34, rule 1, C.P.C., vide also *Madan Pal—Vs.—Rajdeo Upadhaya*, U.P. Gazette Extraordinary, dated 18th May, 1953, P. 1 at P. 4; *Election Petition No. 5 of 1952, Gidwani Choth Ram Partabrai—Vs.—Agnani Thakur Das Chauhrmal and others* reported in Gazette of India, Extraordinary, dated 25th August, 1952, P. 2016 and report of the Writ Petition filed in this very case reported in 1954 Allahabad Law Journal, page 15. In view of these rulings, we think that, after the amendment of the List, the Petition cannot be said to be vague in any manner and we hold that the petition is not liable to be summarily rejected on this ground. We decide this Issue accordingly against the respondent No. 1.

Issue No. 4.—It has been alleged in para. 4 of the Petition that the respondent No. 2, Sri Madan Mohan Verma, had filed 4 Nomination Papers, in which the proposers were Ram Narain, Lalta, Nanak Parsad and Salik, while the seconders were Ram Sahai, Khilawan, Gaya Din and Jal Jal Ram, but, on the date of scrutiny, the proposers and seconders mentioned above filed written objections

before the Returning Officer that their signatures on blank nomination papers had been obtained by fraud, as it had been represented to them that these nomination papers would be filed by Sri Ram Lal Gupta. There is no doubt that the copies of the Nomination papers have been filed by the Petitioner and also the affidavits filed by the proposers and seconders before the Returning Officer as well as copies of the statements of Salik, Nanak Prasad and Gaya Din, but none of these documents have been proved and Ram Naram, Lalita, Nanak Prasad, Salik, Ram Sahai, Khilawan, Gaya Din and Jai Jai Ram have not been examined. The respondent No. 1 has filed a copy of the order of the Returning Officer, dated 27th November, 1951, Ex. A1, which shows that the Returning Officer held a regular enquiry in which witnesses were examined and, after taking into consideration the evidence before him, he came to the conclusion that the nomination papers filed on behalf of Sri Madan Mohan Verma were valid and signatures of the proposers and seconders had not been obtained by fraud. Similar orders were passed on the applications of Salik, vide Exs. A2 and A3. Sri Mahadeo petitioner has admitted that the Returning Officer recorded the statements of Salik, Khilawan, Nar, Ram Sahai and Gaya Din during the course of enquiry and, after considering their affidavits, he rejected their objections. Sri Tiddi Parsad (P.W. 17) has merely stated that he had been told by Sri Lalita Prasad Misir, respondent No. 5, that the proposers and seconders of all the nomination papers filed by Sri Madan Mohan Verma had objected to the effect that their signatures on the nomination papers had been obtained by fraud and misrepresentation and Sri Suraj Bhan Lal had filed the application dated 27th November, 1951, Ex. 3, before the Returning Officer, but he has not stated anything from his personal knowledge that these nomination papers had really been obtained by fraud. The other witnesses for the petitioner also have no personal knowledge on this point and so it cannot properly be inferred in this case that the nomination papers of Sri Madan Mohan Verma were improperly accepted and the petitioner sustained any loss on that account. If the nomination papers of Sri Madan Mohan Verma were properly accepted, the argument that his nomination papers should have been rejected and the voters, who voted for Sri Verma would have voted for the petitioner cannot be accepted under the circumstances mentioned above, *Vide Hari Shankar Bagla—Vs.—Kishen Chand Puri* and others reported in Doabia's Indian Election Cases, Vol. I, P. 127. We, therefore, hold that the nomination papers of Sri Madan Mohan Verma (respondent No. 2) were properly accepted by the Returning Officer and the result of election has not been materially affected thereby as against the petitioner. We decide this Issue against the Petitioner.

Issues Nos. 5 and 9.—We shall take up both these Issues together. According to the Petitioner the structure of polling booths provided with loose and low thatch screens was so defective that the voters while looking at the symbols of the ballot boxes in which they cast their votes were exposed to the public view and were quite visible to the candidates and their agents admitted inside the polling station. Such types of structures were particularly conspicuous, according to the Petitioner, at the polling stations of Rampur Bhagan, Bharopur Tikar, Sonaura Gaupur, Natwari Chatarpur, Toron Darabgunj and Ghuri Tikar with the result that the principles of secrecy of voting were reduced to a farce and the respondent No. 1 and his agents were thereby enabled to exercise undue influence on the voters, who were either their tenants or were otherwise under their thumb and so the election was not at all a free election. The petitioner has examined Patai (P.W. 1) to depose that the Tattis (thatched screens) at Taron polling station were of breast height and voters could be seen at the time of actual polling by the persons, who were standing outside these tattis in the room. But Patai has not stated that it could be seen by the persons standing outside the polling booths in the room as to for whom a particular voter actually cast his vote. Sri Tribhuwan Nath Singh Rathor (P.W. 2) was at Rampur Bhagan polling station on the polling day and his statement is to the effect that the tattis there were about 5 ft. in height in two booths and at other booths they were of sufficient height and men inside these booths were not visible from outside. Sri Tribhuwan Nath Singh Rathor has admitted in cross-examination that he had no talk with Sri Madho Parsad Singh about these tattis or about the infringement of secrecy of votes. It has also been admitted by this witness that he does not remember whether he had given any application or he had raised any oral objection before the Presiding Officer to the effect that secrecy of voting was being infringed. The Returning Officer visited Rampur Bhagan polling station, but this witness made no complaint to him and so the belated and vague statement to the effect that undue influence could be exercised on the voters at this polling station cannot be accepted at its value. Ram Raj (P.W. 3) has deposed about Chhatarpur Natwari polling station and he has tried to show that tattis there were about 4½ ft. high and people standing outside the polling booths in the room could know from the raising of the arm of the voter at the time of casting of vote for which

particular candidate had the voter actually voted. This witness has not clearly stated whether any voter actually raised his arm to signify the people outside for whom had he actually voted and, as his statement about the height of tattis is very vague, we do not think any reliance can be placed on his statement and, in any case, his statement is not sufficient to establish that the tattis were of a type which infringed the secrecy of voting. Ram Das (P.W. 4) had also cast his vote at Chattarpur Natwari polling station and he has tried to corroborate the statement of Ram Raj. Ram Das has gone a step further and he has stated that voters casting their votes could be seen by the people, who were standing outside in that room, but Ram Raj had merely stated that people standing in the room could not see for whom a particular voter had voted unless the voter raised his arm.

Mahadeo (P.W. 6) was a voter of Taron polling station and he has stated that people casting their votes could be fully observed by people, who were outside in the room. In cross-examination, he had to admit that people standing outside the enclosures could not go near the tattis and, if a voter raised his hand high, only then could he be seen as to for whom was he voting. Mahadeo is an unsummoned witness and as, Mahadeo, Ram Das and Ram Raj are caste fellows of the petitioner, they cannot be deemed to be disinterested witnesses.

Sri Ram (P.W. 10) had gone to cast his vote on polling station Gaupur Sonaura and he has stated that the tattis there were of chest height but he has tried to show that the tattis were very thick. This part of his statement has not been corroborated by other witnesses for the petitioner. Jai Ram (P.W. 11), Jassi (P.W. 12) and Brij Raj (P.W. 13) have also stated about the same polling, but they have not stated that the tattis were very thin.

Tribhuwan Singh (P.W. 15) worked for the petitioner in the last general election in villages Balli Kirpalpur and many other villages and he was agent in Sonaura Gaupur polling station and he has tried to show that the voters, while casting their votes, were visible to the people standing outside and so he had raised an objection to this effect before the Presiding Officer. It is very significant that Sri Tirbhuwan Singh filed no written application to the above effect and, as he has admitted in cross-examination that he does not know even the name of the Presiding Officer upto the time of his making his statement before this Tribunal, we do not think his belated statement on this point can be accepted as correct. The statement of this witness further shows that Jai Ram, Sri Ram, Jassi and Brij Raj complained to him that they were afraid of Narain Pratap Singh, but even then this witness did not file any written objection before the Presiding Officer. Sri Mahadeo, Petitioner, (P.W. 7) visited Nandsa, Seni Bazar, Haidergunj and Benti polling stations a day before the actual voting and he found that the tattiscreens fixed in the polling booth were low and so he got their height raised. On the date of election he claims to have found the height of tatti screens to be 4 ft. or even below at Sonaura Gaupur, Natwari, Rampur Bhagan, Toron Darabgunj and Ghuri Tikar, but this version cannot be accepted as correct, as his own witnesses referred to above have clearly admitted that these tattis were of chest height. As such, the statement of the petitioner appears to be very vague and unrellable on this point.

The evidence of the petitioner's witnesses thus does not show that it could be known to people standing outside the polling booths as to for whom a particular voter was casting his vote inside the polling booths and, as the tattis did not appear to be thin and the petitioner's witnesses appear to be interested, it is very difficult to hold on the basis of the statements of witnesses, who have been examined by the petitioner, that there really was any infringement of the secrecy of voting on any polling station in Faizabad and Bikapur East Constituency.

The respondent No. 1 has examined Sri HidaI Narain, who was the Presiding Officer at Rampur Bhagan polling station and he has stated that the thatched screens provided in the polling station were of sufficient height and they were not defective and people present in the hall outside the polling booths could not see the voters casting their votes as even the heads of the voters could not be seen from outside. This witness is the Officer-in-Charge of Tanda Municipal Board and, as nothing has been suggested against him, there seems to be no good reason for disbelieving his statement. It is clear from the statement of this witness that no written complaint was filed before him, during the course of polling and, if the secrecy of voting had really been infringed, it is difficult to believe that no such application would have been filed before the Presiding Officer.

Sri M. N. Shukla, Returning Officer, (R.W. 2) has categorically stated that on his visit to Bikapur polling station before the actual polling day he had found

that the polling booths were in order and the secrecy of voting was ensured. The Returning Officer had visited Taron Darabgunj, Rampur Bhagan, Nanda, Sonaura Gaupur, Kalauli, Ghuri Tikar, Benti, Paroma, Haidergunj, Natwari Chattarpur and other polling stations and he had found that the polling arrangements were quite satisfactory and secrecy of voting was ensured. He had gone to Bikapur, Taron Darabgunj, Rampur Bhagan, Natwari Chattarpur, Nandsa and Taron polling station when polling was actually going on and he also saw that people casting their votes were not visible from outside at any time and, as no candidate or agents complained to him that the secrecy of voting was being violated, it becomes clear that the belated allegation of the petitioner to the effect that tattis were thin and of low height cannot be accepted as correct.

Sri Ram Avadhr (R.W. 6) Adali Panch of Balli Kirpalpur, has stated that the screens in Sonaura Gaupur polling station were upto a man's height. Mahabir Singh, Panch, Gaon Sabha Balli Kirpalpur (R.W. 7) has also stated the same and Sri Mahesh Pratap (R.W. 8), who was the agent of the respondent No. 1 in Rampur Bhagan polling station has also stated that the screens of the polling booths were of more than a man's height and there was absolutely no complaint about these screens at any stage during the course of polling.

We think that the statements of the Returning Officer and Sri Hirday Narain (R.W. 1) are worthy of belief in view of the fact that the petitioner's evidence is not at all reliable on this point and so we hold that the tattis used in the polling booths were of sufficient height and they were sufficiently thick and there was no infringement of secrecy of voting at Rampur Bhagan, Barlopur Tikra, Sonaura Gaupur, Natwari Chattarpur, Taron Darabgunj, Ghuri Tikar or any other polling station, within the meaning of S. 15 of the Representation of the People Act and Rule 18(1) of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951.

Sri Mahadeo Petitioner (P.W. 7) has stated that he had come to know in the second week of January, 1952 that the ziledars of Bhitl and Khajurhat and their Karindas, Sri Gauri Shanker Singh, Manager (R.W. 5), Sri Rana Maheshwari Jung, Sri Narain Pratap Singh and Sri Lallan Ji were intimidating the voters by telling them that they would not be allowed to graze their cattle or take fuel etc. and they would be ejected from their holdings and they would be implicated in different cases. The petitioner has further stated that Karia, Budhu, and Lachu of Jadopur, Ram Naresh of Kurwa, Brij Ram (P.W. 13), Jai Ram (P.W. 11), Sri Ram (P.W. 10) and Jassi (P.W. 12) of village Balli Kirpalpur were actually threatened with beating. Rambali Yadav, Ram Pyarey Singh, Ram Milan, Ram Kewal and Jung Bahadur Singh had given information about this intimidation to the petitioner, but none of these witnesses were examined in this case, even though they were workers for the petitioner in the election. Sarju Prasad, Mewa Lal Gupta of Socialist Party and Uday Raj Misir of K.M.P.P. had also given information to the petitioner regarding this alleged intimidation of voters by the alleged workers of the respondent No. 1, but these witnesses have also not been examined by the petitioner and so the statement of the petitioner on this point cannot be deemed to be based on his personal knowledge. If the petitioner had really come to know that these witnesses had been intimidated by the respondent No. 1 and his workers, the names of these witnesses would surely have been mentioned in the original list 2 of the Petition. But in that list their names were not given and it was merely stated that voters of Kurwa, a hamlet of Jai Singh Mau had been intimidated. Later on it appears that, when these witnesses became ready to depose in favour of the petitioner, amendments of the petition were sought.

Sri Ram, Jai Ram, Jassi and Brij Raj witnesses have been examined to corroborate the statement of Sri Mahadeo (P.W. 7) on this point, but Jai Ram and Sri Ram are not proved to be voters. It is to be seen how far have these witnesses been able to establish that the respondent No. 1, his relations, agents and workers, intimidated the voters of Khajurhat and Bhitl Taluqas. Sri Ram (P.W. 10) had at first stated that Sri Narain Pratap had intimidated him when no other petitioner's witness was present, but other people of his village were there. It is very significant that Sri Ram does not know the names of the persons of his village, who were present at the time when Sri Narain Pratap intimidated him. Later on Sri Ram changed his statement and he stated that Jassi, Jai Ram and others were also present at the time when he was intimidated by Sri Narain Pratap in a Marha (village residence) in the evening at about sunset in the month of Kartik and Sri Narain Pratap had intimidated all these witnesses when they were collected at his Marhi. The witness has admitted that he, Jassi, Jai Ram and Brij Raj are all caste-fellows and they belong to the Biradari of the petitioner and they are on dining terms. Sri Ram stated that Sri Narain Pratap

had merely told him that, if he would not vote for the respondent No. 1, he would harass this witness by not allowing cattle to graze in pasture lands, but Sri Narain Pratap did not tell anything else to this witness. Sri Ram does not appear to have been intimidated by anybody else on any other occasion, except at the time of casting his vote when this witness has alleged that he was terrified when Sri Narain Pratap had stared at him. This part of the statement of Sri Ram has not been corroborated by any witness. Jai Ram (P.W. 11) has stated that Sri Narain Pratap had asked him before the date of polling to vote for the respondent No. 1 and, if he failed to comply, he would be harassed. Jai Ram (P.W. 11) has tried to show that he was intimidated by Sri Narain Pratap on a number of other occasions also, but he has not stated in what manner was he intimidated. On the date of polling this witness claims to have seen Narain Pratap outside the polling booth and so he became afraid of him. Jassi (P.W. 12) has stated that Sri Narain Pratap used to go to his village and he used to tell this witness as well as other witnesses to vote for the respondent No. 1 and, in case they would fail to comply, they would not be allowed to graze cattle in pasture lands and they would not be allowed to take water from village ponds. But other witnesses have not stated about prohibition regarding taking water from the ponds. Brij Raj (P.W. 13) had stated that Sri Narain Pratap had intimidated all these witnesses only four or six days before the actual date of polling. According to Brij Raj, Sri Narain Pratap had collected all these witnesses on two occasions in order to intimidate them. As all these witnesses belong to one Biradri and their statements are full of discrepancies and as these witnesses never protested earlier it seems very difficult to hold on the basis of the statements of these witnesses that the respondent No. 1 or his relations, agents or workers really intimidated any voters in the manner alleged by these witnesses before the polling day and if this had been done some complaints would have been filed or some reports would have been lodged against the respondent No. 1, but as no such action was taken, we are of opinion that the belated statements of Sri Ram, Jai Ram, Jassi and Brij Raj regarding alleged intimidation cannot be accepted as correct. We are further of opinion that the statements that they were intimidated when they were inside the polling booths can also not be believed in view of the fact that no complaint on this point was lodged before any Presiding Officer on the polling day.

Zahoor (R.W. 2) has stated that Bhati estate has no concern with Jadopur and he has further stated that the manager of Bhati estate Sri Gauri Shanker Singh and Sri Udai Bhan Taluqdar of Bhati and Sri Lallan Babu of Khajuraha never intimidated any voter in Jadopur village during the last general election. Sri Gauri Shanker Singh manager Bhati estate (R.W. 5) has denied the petitioner's allegations on this point and Ram Avadh Adalti Panch of Balli Kirpalpur (R.W. 6), Mahabir Singh Pradhan Gaon Sabha of Balli Kirpalpur (R.W. 7), Mahesh Pratap (R.W. 8) as well as Sri Audhesh Pratap Singh respondent No. 1 (R.W. 12) have clearly stated that neither the respondent No. 1 nor his agents nor supporters nor friends nor employees nor relations ever intimidated any voters by telling the latter that if they would not vote for the respondent No. 1 they would not be allowed to graze their cattle in pasture lands and their water supply would be stopped. Under these circumstances we are definitely of opinion that the allegation of the petitioner that the respondent No. 1 or Udai Bhan Pratap Singh or their relations, agents or workers exercised undue influence or coercion on the voters to vote for respondent No. 1 and the voters were influenced thereby, has not been substantiated in any manner and so we decide both these issues against the petitioner, *vide* Madan Pal—Vs.—Rajdeo Upadhyaya already referred to above at P. 16 and Syed Hifazat Ali—Vs.—Mr. Mohammad Asghar reported in Doabia's Indian Election Cases, Vol. I, p. 276.

Issue No. 6.—It was alleged that the respondent No. 1 got the votes of Mst. Ilacha and Mst. Mohri mentioned at Nos. 973 and 1020 in the electoral roll even though these voters had died long before the polling day and it was further alleged that the votes of Ram Murat Tewari and Mata Prasad Tewari were similarly obtained even though these voters were in Calcutta on the date of polling. The petitioner has not produced any reliable evidence to prove these facts and in fact it has not been proved in this case that voter No. 973 actually voted at all and it has further not been proved that Smt. Mahura is not alive. Similarly it has not been proved by the petitioner that Ram Murat Tewari and Mata Prasad Tewari were at Calcutta on the polling day. As such we hold that this allegation of the petitioner has not been proved and we decide this issue against the petitioner.

Issue No. 7.—Sri Tirbhawa Nath Singh Rathaor (P.W. 2) was at Rampur Bhagan on the polling day but he has not stated that the Presiding Officer in any manner, persuaded the voters to vote for the respondent No. 1. Sri Mahadeo (P.W. 1) has vaguely stated in his examination-in-chief that at Rampur Bhagan his agent

Sri Girja Shanker Pande and Sri Tribhawan Singh Rathaur (P.W. 2) had complained to him that the Presiding Officer was persuading the voters to cast their votes for the respondent No. 1 and written report was made about this in the presence of the petitioner. No, such written complaint has been produced and proved in this case and as the statement of the petitioner is contradicted by Tribhawan Singh Rathaur (P.W. 2), even though he was an unsummoned witness, we think the statement of the petitioner cannot be believed on this point.

The respondent has examined Sri Hirdai Narain, Presiding Officer of the Rampur Bhagan polling station and he has categorically denied the petitioner's allegation that he canvassed for the respondent No. 1 when polling was going on. As absolutely no good reason has been suggested why Sri Hirdai Narain would have persuaded the voters at the time of polling the vote for the respondent No. 1 we believe the evidence of Hirdai Narain (R.W. 1) and we hold that the petitioner has failed to establish that the Presiding Officer of Rampur Bhagan persuaded the voters to vote for the respondent No. 1 at the time of polling and we decide this issue also against the petitioner.

Issue No. 8.—It has been mentioned in clause (e) or paragraph 7 of the petition that the votes of two invalid postal ballot papers were wrongly included among the votes cast in favour of respondent No. 1 at the time of counting. One of the postal ballot papers contains a tick mark as against the name of the respondent No. 1 and this postal ballot paper has not been challenged before us even at the time of arguments. The other ballot paper which contains a X mark as against the respondent No. 1 and a very small dot against the name of Sri Mahadeo petitioner has been challenged and it has been urged that as a portion of the X mark comes within the column facing the name of Sri Mahadeo petitioner and as there is a dot in front of the name of the petitioner, this vote should have been rejected for uncertainly. In *Berwic Case* (1880) 44 L.T. 289 it was held that if the 'X' is partly in the space opposite one candidate's name and partly in that opposite another's, the vote is valid for the candidate opposite whose name the two lines of the 'X' intercept, *Vide Chandra Prakash Law of Election* 1950 Edition, p. 78. In this particular case if this test is to be applied it becomes clear that this postal ballot paper was also valid and the vote was properly counted in favour of the respondent No. 1. It has been laid down in *S. Mohan Singh—Vs.—S. Santosh Singh* reported in *Doabia's Indian Election Cases* Vol. I, p. 192 that the ballot paper should be rejected only if the writing or mark affords means of identifying the voter and this ballot paper bears besides the 'X' mark, some writing by the hand of the voter the vote would not be rejected. In view of this ruling even if it be assumed that this voter placed a dot in front of the name of the petitioner, his clear intention to vote for the respondent No. 1 appears from the 'X' mark and so this dot will not be of any material importance.

S. 60 of the Representation of the People Act lays down the special procedure for voting through postal ballot and Rules 35, 37, 38, 39, 40, 41 and Form No. 11 instruction (3) are material for the purpose of the case before us. Instruction (3) lays down that vote shall be recorded by placing a mark on the ballot paper opposite the name (or names) of the candidate (or candidates) for whom the elector wishes to vote. In the case before us the voter put a clear 'X' mark in front of the name of the respondent No. 1 and so in our opinion the two postal ballot papers were rightly counted in favour of the respondent No. 1 as valid votes. The issue is decided accordingly against the petitioner.

Issue No. 10.—The petitioner alleged in para. 9 of the petition that Sri Priya Datta Ram, Chairman of the Municipal Board, Faizabad, is the proprietor of village Baraon Gopalpur etc. within the constituency of Bikapur and the respondent No. 1 in order to secure the effective help and support of Sri Priya Datta Ram executed a lease of a big piece of land situated in his taluquadari in shape of a farm in order to enlist an active support and so Sri Priya Datta Ram as well as other Taluqdars related to the respondent No. 1 practised undue influence on an extensive scale on the voters. No certified copy of any registered lease has been produced by the petitioner nor has any witness come forward to depose that any such lease was executed by the respondent No. 1 in favour of Sri Priya Datta Ram in his presence. Sri Audhesh Pratap Singh (Respondent No. 1) has stated that he had given a lease of some villages to Sri Gauri Shanker regarding 100 bighas of land but Sri Priya Datta Ram was never a co-lessee with Sri Gauri Shanker. He has further stated that Babu Ram was formerly his sepoy but he was not in his service at the time of election. If any lease had really been executed some entries would have been made on the basis of this lease in the revenue papers and certified copies of the current revenue papers could very easily be produced but this has also not been done. Under these circumstances it is very difficult to hold that Sri Priya Datta Ram

was in any way bribed and he had any occasion for exercising undue influence on the voters in favour of the respondent No. 1 thereby securing any vote for the respondent No. 1 and we hold that this allegation of the petitioner is also not proved. We, therefore, decide this issue also against the petitioner.

Issue No. 12.—It has been contended on behalf of the respondent No. 1 that as the petitioner himself applied for recounting he is estopped from challenging the result of the recounting. We are unable to accept this argument for if any mistake was really committed in recounting the petitioner is certainly entitled to show that there were mistakes in recounting and no question of estoppel will arise in this case. We, therefore, decide this issue against the respondent No. 1.

Issues Nos. 11 and 14.—We shall take up both these issues together. Sri Mahadeo (P.W. 1) has stated that the counting of votes began on 3rd February, 1952 at about 9 A.M. and it continued till 9 P.M. According to him there were three intervals. The first was from 1-30 P.M. to 2-30 P.M., the second was from 4 P.M. to 4-30 P.M. and the third was from 7-40 P.M. to 8 P.M. and according to the petitioner all the candidates and their agents were asked by the Deputy Commissioner Sri J. N. Ugrah (R.W. 4) and the Returning Officer Sri M. N. Shukla (R.W. 3) to go out of the room. The petitioner has further stated that Officers also used to leave the room during these intervals and some unknown persons used to remain inside the room. During these intervals the votes already counted were not kept in any envelopes nor were any such envelope sealed and signed by the candidates or their agents. The counted votes used to be kept in old ballot boxes but these ballot boxes were also neither locked nor sealed. According to the petitioner the votes cast in favour of the respondent No. 1 were counted first but before the counting of these votes could be completed, the ballot boxes containing the votes of the petitioner were also opened, and the ballot papers relating to the respondent No. 1 and the petitioner were counted before the first interval and the request of the candidates that the result of each polling station should be announced immediately after the votes of that polling station had been counted was not granted. After the first interval the votes cast in favour of Sri Lalta Prasad Misra and Sri Ram Prasad Singh were counted and after the second interval the votes cast in favour of Sri M. M. Verma and Sri Madho Prasad Singh were counted till about 6-30 or 6-45 P.M. Then some time was taken in totalling and at 7 P.M. the result was announced that there was a tie between the respondent No. 1 and the petitioner. The petitioner has tried to show that at this stage the respondent No. 1 arrived and he had a talk with the Deputy Commissioner for sometime and subsequently Sri Madan Mohan Verma also joined in this talk. After this talk was over the respondent No. 1 demanded recounting and his agent filed a written application with that purpose. Sri Ugrah (R.W. 4) then asked the petitioner if he had any objection to recounting and the petitioner said that he had none and then the petitioner filed the application for recounting, Ex. A/5. The petitioner has further on stated that all the candidates were then asked by the District Magistrate to go out of the room as another interval of 20 minutes was declared. The recounting began according to the petitioner at about 6 P.M. and after 4 or 5 minutes the District Magistrate announced that an additional vote had been discovered to have been cast at Paroma polling station in favour of the respondent No. 1—vide the re-check receipt Ex. 1 paper No. 152/C and copy of the Form No. 14, Ex. 2 relating to Paroma polling station. Sri Mahadeo (P.W. 1) has tried to show that counting of votes was not proceeded with then, and it was announced immediately that the respondent No. 1 had been elected. The petitioner's evidence on the points mentioned above is supported by Lalta Prasad (P.W. 8), Ram Naresh Singh (P.W. 9), Asha Ram (P.W. 16) and Tiddi Prasad (P.W. 17). Tiddi Prasad (P.W. 17) had been authorized by the petitioner to scrutinize the nomination papers filed before the Returning Officer in connection with this election and he was also the counting agent of the petitioner on 3rd February 1952. Tiddi Prasad (P.W. 17) was the last witness to be examined on behalf of the petitioner and it was for the first time that he stated on behalf of the petitioner that he smelt something fishy about the declaration of the third interval because the respondent No. 1 had a talk with the Deputy Commissioner before this recess was declared and it was after this talk that the respondent No. 1 had told the Returning Officer that he would apply for recounting. Sri Mahadeo petitioner was also present there and he had also subsequently applied for recounting and if his counting agent had really smelt something fishy about the third recess it becomes very difficult to believe that he would not have told the petitioner about this matter and if Sri Tiddi Prasad expressed his suspicions and informed the petitioner about the designs of the respondent No. 1, the latter could never have agreed to recounting by filing an application Ex. A4. In any case Sri Tiddi Prasad must have told the petitioner about his misapprehensions after the result had been announced by the Returning Officer but even then the petitioner failed to allege

in the petition that any irregularities were deliberately committed by the District Magistrate or the Returning Officer during the course of recounting. The petition shows all that was alleged in clause B of para. 10 was that there were three intervals and during these intervals the counting hall was cleared off of the candidates and their agents while some of the officers also left, others of the counting staff stayed behind in the hall with unsealed ballot boxes and other papers and the above illegality was committed by the District Magistrate and the Returning Officer remained there a silent spectator. It was nowhere suggested in the petition that the District Magistrate or the clerk working on his table Sri Mirza Beg found out an additional ballot paper at the time of recounting when in fact there was none, in the ballot papers which had already been counted. In fact, no mention has been made of any recounting in the petition. The packet which contained twenty-one ballot papers instead of 20 had been punched by a punching machine and wire had been used in tagging these ballot papers and so it seems very difficult to believe that within a few minutes Mirza Beg or anybody else could have surreptitiously inserted an additional ballot paper in this small bundle as is being suggested by the petitioner and his witnesses.

The statement of Sri M. N. Shukla, Returning Officer (R.W. 3) shows that counting of votes was carried on in the District Board Hall which is about 50 to 60 ft. long and 30 to 40 ft. wide and at the time of counting the table of the Returning Officer was on the extreme end of the hall on raised dais while the 3 or 4 tables on which counting was actually done were in the centre and the candidates and their agents were on the raised platform in the eastern end. The ballot papers were brought from the northern gate and after counting they used to be kept in small bundles of 20 each and the clerks used to wrap them in bundles and packet slips were also prepared by the clerks while check slips were used to be prepared by the checking clerks. When the bundles were finally wrapped in one big bundle then it used to go to the returning officer for final signatures and he used to check some of the packets at random. The Returning Officer prepared the account in Form No. 14 booth-wise, *vide* Exs. 2, 4, 6 and 7. All the bigger bundles relating to one candidate were kept in tin containers which were used as ballot boxes in old elections. Sri Shukla, Returning Officer has stated on oath that at the time when recess used to be declared these containers used to be sealed and he has also stated that the additional ballot paper which was found at the time of recounting was stitched in the bundle and it was not loose. He has further stated that in fact he did the whole work and as at the time of recounting mostly gazetted officers including the District Magistrate Sri Banerji S.D.O. Faizabad, Sri Bishun Chand J.O. and some clerks worked, there was no possibility of any additional ballot paper being surreptitiously inserted in already counted votes. The statement of the Returning Officer further shows that he never left the hall from beginning to end and he took his lunch and tea in the hall and recounting of the votes cast in favour of the petitioner, respondent No. 1 and Sri Madan Mohan Varma was completed and after the complete recounting the result was announced and the respondent No. 1 was declared elected by one vote. Mr. Shukla has further clearly stated that he verified the bundle in which the additional vote in favour of the respondent No. 1 was found on the table at which the District Magistrate was himself working and the Returning Officer collected the check slips as well as the packet slips and the District Magistrate himself wrote the check-slips, Ex. 1, on finding the mistake to the effect that one more vote was really cast in favour of the respondent No. 1 at Paroma polling station and the mistake has been detected. The statement of Sri Shukla (R.W. 3) is fully corroborated by Sri J. N. Ugrah the then Deputy Commissioner, Faizabad and also by Sri Suraj Bhan Lal Vakil (R.W. 11) and by Sri Audhesh Pratap Singh (R.W. 12).

It has been contended by the learned Advocate for the petitioner that Sri J. N. Ugrah (R.W. 4) should not have taken so much interest in the counting of votes relating to this constituency as he appears to have taken. It has further been urged that as Sri J. N. Ugrah had a talk with the respondent No. 1 before the recounting of votes and as the Returning Officer did not draw lots as was mandatory under Section 65 of the Representation of the People Act, 1951 and everybody was asked to vacate the hall before recounting and unused ballot papers were admittedly opened *vide* the application Ex. 9 and the order passed thereon, Ex. 10, and as ballot paper No. 442220 does not appear to have been issued by the polling clerk, it should be inferred that this ballot paper was surreptitiously introduced at the time of recounting by some person on the table of the District Magistrate. The statement of Sri J. N. Ugrah, I.A.S., District Magistrate shows that he was responsible for general conduct of elections and so there seems to be nothing unusual if he was present at the time of counting of votes in this constituency where the contest was very keen indeed as the petitioner lost

the election by one vote only. It is possible that the District Magistrate might have apprehended some trouble and so he chose to remain there but as no definite question was put to him on this point in cross-examination we think that it cannot be inferred from his mere presence that he was unduly interested in the respondent No. 1. The petitioner had been a member of the Congress upto September 1951 while the respondent No. 1 was an independent candidate and so Government officials could not possibly take any interest in the election of the respondent No. 1. The petitioner no doubt tried to show that the District Magistrate had some talk with the respondent No. 1 before recess was declared for the purpose of recounting of votes and later on Sri Madan Mohan Varma also joined in this talk but Lalta Prasad (P.W. 8) has clearly admitted that after the tie had been declared the District Magistrate and the Returning Officer were contemplating drawing of lots but just then the respondent No. 1 reached the place and he had a talk with the District Magistrate and Sri Madan Mohan Varma and as a result of this talk the respondent No. 1 became prepared to give an application for recounting and he ultimately gave an application for recounting. The evidence of Lalta Prasad (P.W. 8) thus shows that the respondent No. 1 had no secret talk with the District Magistrate before recounting and as the petitioner also gave an application for recounting immediately after, and no candidate took any exception to anything done there regarding recounting, it becomes clear that the statement of Tiddi Prasad (P.W. 17) to the effect that he smelt something fishy about the declaration of the third interval is an afterthought.

Rule 103 of the Representation of the People (Conduct of Election and Election Petition) Rules, 1951, makes a provision of recounting if the Returning Officer is not satisfied as to the accuracy of the previous counting and when the petitioner and the respondents No. 1 and 2 applied for recounting, there is every reason to believe that the Returning Officer was satisfied that there was occasion for recounting and so it cannot be said that recounting was in this case absolutely unjustified.

It has been urged that the witnesses for the petitioner are disinterested as they belong to different parties and so their statement regarding undue haste in recounting should be believed. It is clear from the record that both the Congress candidates and the petitioner as well as the Socialist Party candidate are interested in ousting the respondent No. 1 and even though the petitioner has claimed a seat for himself, and he could claim recounting *vide* Hammond's Indian Election Cases p. 699 and p. 701 (Nawab Mirza Shuja Beg, K. B. Vs. Molvi Mahboobul Haq) the other party candidates and their supporters are making efforts to secure a new chance, if possible, to contest a fresh election and so they cannot be deemed to be disinterested witnesses so far as the respondent No. 1 is concerned. Lalta Prasad has further admitted that the Returning Officer remained present throughout the counting and other Officers including the District Magistrate were also there to help the Returning Officer and so the allegation that the District Magistrate assumed the roll of a dictator there, cannot be deemed to be correct. Lalta Prasad had to admit in cross-examination that the counting was done in the presence of the candidates and their agents and nobody prayed there that the ballot papers should be tagged and sealed after counting. He has also admitted that when the boxes relating to the respondent No. 1 were opened and the votes counted it was then that the boxes of other candidates were opened one after the other. Lalta Prasad has finally admitted that at the time of counting he felt that counting was going on all right and there was no occasion to raise any objection. He has further clearly admitted that recounting was done on the application of the petitioner and the respondents No. 1 and 2 and Sri Audhesh Pratap Singh respondent No. 1 did not take the District Magistrate aside and he had talked with him in the presence of this witness as well as in the presence of the petitioner and other candidates and their agents. We think that the petitioner is not justified in complaining on the ground that the Returning Officer did not draw lots immediately after a tie was declared for it is in the evidence of the petitioner's witnesses themselves that immediately after the tie was declared the petitioner, the respondent No. 1 and the respondent No. 2 filed applications for recounting and so recounting was done at their request when the Returning Officer was satisfied that there might be mistakes in counting. The argument that all the candidates and their agents were asked to go away during the third recess and so some clerk or other unknown person got an opportunity of inserting the ballot paper No. 442220 also does not appear to us to be of any force for it is clearly established from the evidence of the Returning Officer that he remained in the hall throughout. Ram Naresh Singh (P.W.9) has admitted that the Returning Officer used to keep the bundles in an old box and on the slip the number of votes used to be written and the lid of the old boxes used to be shut and so it was not easy for any person to take out a particular bundle from such boxes to insert an additional

ballot paper within such a short time. Asha Ram (P.W.16) has admitted that during the intervals counted votes used to be kept in ballot boxes which were placed on both sides on the table of the Returning Officer and as the Returning Officer did not leave the hall we think that there was no possibility of any clerk inserting an additional ballot paper inside any packet contained in one of these old ballot boxes. The petitioner's witnesses have no doubt tried to show that the additional one vote was found within 5 or 6 minutes of the starting of recounting but their estimate does not appear to be correct for it appears from the statement of Sri M. N. Shukla, Returning Officer and Sri J. N. Ugrah that about 30 to 45 minutes were taken in recounting and as all the votes had already been counted and kept in small bundles of 20 each the recounting could probably be finished in about 45 minutes. In our opinion there is no good ground for disbelieving the evidence of Sri M. N. Shukla and Sri J. N. Ugrah on this point and we think that simply because during the recess interval some people were asked to leave the hall will not go to show that any additional vote was surreptitiously inserted in one of the packets for the respondent No. 1 by some unknown person.

There is no doubt that the ballot paper—U.P.A./24—442220 does not appear to have been given to any voter by the polling clerk at Paroma booth No. 1 as no corresponding entry appears to have been made on the marked voters' list. Sri M. N. Shukla has admitted that after seeing the bundle 1 marked by the Tribunal and after counting the votes in the bundle he found that there were 21 ballot papers in it instead of 20 and the ballot paper mentioned above was not noted to have been issued by the polling clerk at polling booth No. 2 of Paroma polling station in the marked copy of electoral roll. In the ordinary course this ballot paper should have been issued to some voter for it is established in this case that ballot papers from Nos. 442001 to 443000 had been issued for Paroma Polling Station and ballot papers from 442001 to 442415 had been used there on the date of polling. It is possible that some of the numbers have been noted twice on the marked copy of the electoral roll and others have been omitted and so if the number of the ballot paper 442220 was omitted there, it cannot be inferred with certainty that ballot paper was not issued at that polling station. It appears to be certain from the numbers of ballot papers actually used at Paroma polling station that this particular ballot paper was given to some voter although it was not entered by mistake in the marked copy of electoral roll and so we do not think that any importance can be attached to the fact that this ballot paper was not entered in the marked copy of electoral roll at the time when it was actually issued to some voter and from the mere fact that it was not entered in the marked copy of the electoral roll by sheer mistake, it cannot be inferred that this ballot paper was surreptitiously introduced in the bundle of counted votes before recounting during recess hour by some unknown person, *vide* (Sri Hari Dat Vs. Sri Madan Mohan—Election Petition No. 171 of 1952, reported in U.P. Gazette Extraordinary, dated 19th June 1953, p. 1, at p. 7). The petitioner filed the application, dated 3rd February 1952, Ex. 9, complaining that unused ballot papers contained in the envelopes of Bainti and Tikri polling stations were opened for unknown reasons before the recounting took place and so a proper inquiry be made. The order Ex. 10 was passed on the application just then and it shows that no inquiry was called for as all openings were done in presence of candidates and for adjusting the ballot paper accounts as this order was passed in the usual course of business by a responsible Officer in the presence of the candidates and their agents and as no further action was taken by any party it can be safely inferred that the envelopes containing unused ballot papers were opened for adjusting the ballot paper accounts. We are, therefore, of opinion that the petitioner cannot take any advantage of the fact that some envelopes of unused ballot papers had to be opened for adjusting ballot paper accounts and the argument that unused ballot paper envelopes were opened in order to enable some unknown person to insert a ballot paper in the counted votes appears to us to be wholly unacceptable. We, therefore, hold that there were no irregularities in counting or recounting of votes as alleged in para. 10 of the petition and the mere fact that there were 3 intervals on the date of counting of votes will not help the petitioner in any way. The fact that the boxes containing counted votes were merely closed and they remained in the presence of the Returning Officer but were not sealed will also not be of any material importance in view of the circumstances mentioned above and the result sheet Exs. 5 to 11 must be deemed to be correct and so we decide both these issues against the petitioner.

Issue No. 13.—According to the petitioner the return of election expenses filed by the respondent No. 1 is incorrect in 4 material particulars, namely;

- (1) that the price of two nomination papers has not been mentioned there,
- (2) the travelling expenses from Khajurahat to Faizabad on two occasions have also been omitted,

(3) charges relating to flags and billas used in the election have not been mentioned in the return of election expenses, and

(4) No expenditure on ink has been shown in the return.

Sri Avadhesh Pratap Singh (R.W.12) has stated on oath that no cloth was purchased by him for preparing badges and billas and an old jizam had been used for that purpose. He has further stated that 3 nomination papers were filed on his behalf but he had paid for only one nomination paper and the remaining two nomination papers had been purchased by Baldeo Misir (R.W.9) and Ran Bahadur Singh (R.W.10) of their own accord. Sri Avadesh Pratap Singh has further stated that he had not attended the office of the Returning Officer on the day of filing the nomination papers or at the time of scrutiny and so no expenses were incurred by him for proceeding to Faizabad from Khajurahat on those days. The expenditure on ink has been shown in the return of election expenses as it appears from the return Ex. A/4 that one box ink costing Rs. 1-2-0. was purchased by the respondent No. 1. As the evidence of the respondent and his witnesses has not been effectively rebutted by the petitioner we hold that the return of election expenses filed by the respondent No. 1 has not been proved to be incorrect in any material particular and the election of the respondent No. 1 is not liable to be declared void on this ground. We decide this issue also against the petitioner.

Issue No. 15.—In view of our findings above we hold that the petitioner is not entitled to any relief.

ORDER

The petition fails and it is hereby dismissed with costs to the respondent No. 1. The costs of the respondent No. 1 come to Rs. 652-13-0. The remaining respondents will neither pay nor receive any costs.

(Sd.) BRIJ NARAIN, *Chairman.*

(Sd.) B. B. LAL, *Member.*

(Sd.) SUKHDEO PRASAD, *Member.*

The 4th March 1954.

ANNEXURE

ELECTION TRIBUNAL, GORAKHPUR

PRESENT:

Sri Brij Narain—*Chairman.*

1. Sri Brij Behari Lal,

2. Sri Sukhdeo Prasad—*Members.*

ELECTION PETITION NO. 271 OF 1952

Sri Mahadeo—*Petitioner.*

Vs.

Sri Audhesh Pratap Singh and another—*Respondents.*

FINDING ON ISSUE NO. 1

The Petitioner has claimed the following reliefs in this case:—

- (a) That the election of respondent No. 1 be declared void and the petitioner be declared duly elected for the General Constituency of Bikapur East District Faizabad;
- (b) That in case the petitioner be not declared to be duly elected the entire election be declared to be void and a re-election be ordered;
- (c) That the cost of this petition be saddled on respondent No. 1; and
- (d) that any other or further relief to which the petitioner may be entitled, may be granted to him.

It has been contended by the learned Advocate for the respondent No. 1 that the reliefs claimed by the petitioner are not according to law and so the petition is liable to be dismissed on this ground. Section 84 of the Representation of the People Act 1951 lays down that a petitioner may claim any one of the following declarations:

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

Section 100 of the Act gives the grounds for declaring election to be void and it has been laid down that if the Tribunal is of the opinion—

- (a) that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election; or
- (b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section, to vote or not to vote in any particular way at the election; or
- (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,

the Tribunal shall declare the election to be wholly void.

Similarly in sub-section 2, three grounds have been given on which the Tribunal can declare the election of the returned candidate to be void.

It has been urged that for particular relief different facts or set of facts have to be established and these facts or grounds have been mentioned in sub-section 1 and 2 of section 100, and in the present case the petitioner has claimed both the reliefs without clearly stating the grounds which would disclose a cause of action for different reliefs being granted to him. The argument which has been advanced on behalf of the respondent No. 1 is that as, both the reliefs cannot be granted at one and the same time on the allegations made in the petition, the whole petition may be deemed to be defective. It has been laid down in *Gidwani Chaithram Partabrai Vs. Agnani Thakur Das Chuhr Mal and others*, reported in *Gazette of India Extraordinary*, dated August 25, 1952, that under section 98 of the Representation of the People Act 1951 the Election Tribunal is invested with power to pass at the conclusion of the trial of an election petition any of the four orders set out in the said section and if the evidence in the case warranted such a course it would be competent to the Tribunal to grant an additional relief asked for, in the alternative, by the petitioner. As such it cannot be properly urged that no alternative relief can be granted by the Election Tribunal in any case whatsoever, and without going into the evidence we think that the present election petition cannot be dismissed on this ground.

Section 90 sub-section (4) also lays down that notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of sections 81, 83 or section 117. The argument that the present petition does not contain specific grounds disclosing distinct cause of action for any particular relief would fall under section 83, and so it would be only discretionary with the Tribunal to dismiss the petition if ultimately it is found to be defective and it is further found that no relief can be granted to the petitioner.

It was further argued that under section 84 a petitioner could claim only one of the three declarations mentioned in that section, but it is clear from the section that it has not been laid down there that a petitioner shall claim only one of the declarations, and as the word "may" has been used in this section, this argument also does not appear to be of any force.

We, therefore, hold that the present petition cannot be dismissed at this stage on the ground that the reliefs claimed by the petitioner are not according to law. We decide this issue in the negative.

Issue No. 2.—No arguments were advanced on this issue and as lists appear to be duly verified, we hold that the petition is not liable to be dismissed on this ground either.

The 6th January 1953.

(Sd.) BRIJ NARAIN, *Chairman.*

(Sd.) B. B. LAL, *Member.*

(Sd.) SUKHDEO PRASAD, *Member.*

[No. 19/271/52-Elec.III/5861.]

By Order,
P. R. KRISHNAMURTHY, *Asstt. Secy.*